



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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VIA EMAIL TO: kieran.odonnell@deq.state.or.us

Kieran O'Donnell, Manager
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Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Re: Request for Testimony of Zach Hedgpeth – In the Matter of: Gas Transmission Northwest, LLC,
Compressor Station #13 - DEQ Case No. AQ/RH-HQ-2021-140

Dear Mr. O'Donnell:

I am writing in response to your October 1, 2021, request for the testimony of Zach Hedgpeth at an administrative hearing in the matter of Gas Transmission Northwest, LLC, Compressor Station #13 - DEQ Case No. AQ/RH-HQ-2021-140. The Oregon Department of Environmental Quality (ODEQ) also requested Mr. Hedgpeth's participation in settlement conferences preceding the administrative hearing. For the reasons articulated below, I grant your requests because I find that Mr. Hedgpeth's participation is in the interests of the Environmental Protection Agency (EPA).

EPA's *Touhy* Regulations

By statute, federal agencies are vested with the authority to prescribe the manner in which their employees respond to requests for information from outside sources. Specifically, 5 U.S.C. § 301 provides (in pertinent part) that "[t]he head of an Executive department or military department may prescribe regulations for the government of his department, and the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers and property." Under this authority, government agencies issue regulations governing the manner in which the agency may respond to demands for testimony and the production of documents. Such regulations are commonly called "*Touhy*" regulations, in reference to *United States ex rel. Touhy v. Roger*, 340 U.S. 462 (1951). In *Touhy*, the Supreme Court upheld the authority of the Attorney General to centralize determinations concerning subpoena requests and forbid any unauthorized response. *Id.* If the decision-maker refuses to permit production, a federal employee cannot be compelled to provide the information in question, even if requested to do so by subpoena. *See Id.*

The EPA is not a party to the above-referenced administrative contested case. The EPA's *Touhy* regulations at 40 C.F.R. Part 2, Subpart C, contain restrictions on the EPA employees testifying or producing documents regarding official matters in any proceeding where the United States Government is not a party. *See* 40 C.F.R. § 2.401-405. The purpose of the regulations is "to ensure that employees' official time is used only for official purposes, to maintain the impartiality of the EPA among private

litigants, to ensure that public funds are not used for private purposes and to establish procedures for approving testimony or production of documents when clearly in the interests of the EPA.”
40 C.F.R. § 2.401(c).

Under 40 C.F.R. § 2.402(a), with the approval of the cognizant Assistant Administrator, Office Director, Staff Office Director or Regional Administrator or his designee, EPA employees (as defined in 40 C.F.R. § 3.102 (a) and (b)) may testify at the request of another Federal agency, or, where it is in the interests of EPA, at the request of a State or local government or State legislative committee. As the Regional Counsel, I am responsible for making this determination as it relates to EPA Region 10 employees.

Determination

After reviewing this matter, I have determined that Mr. Hedgpeth’s participation in settlement conferences and an administrative hearing regarding Gas Transmission Northwest, LLC, Compressor Station #13 - DEQ Case No. AQ/RH-HQ-2021-140 is in the interests of EPA. First, EPA has an interest in ensuring that its Air Pollution Control Cost Manual is interpreted correctly. In its Answer, GTN contends that ODEQ “ignores and/or misapplies” EPA’s Regional Haze guidance documents, including the Air Pollution Control Cost Manual. Further, GTN contends: “the guidance documents support GTN’s, rather than DEQ’s cost-effectiveness analysis.” Therefore, the nature of this case will necessitate interpretation of EPA’s guidance, particularly the Air Pollution Control Cost Manual. EPA has an interest in ensuring the interpretation the Administrative Law Judge applies is accurate and reflects EPA’s position as to its own guidance. Second, EPA has an interest in ensuring that Oregon can fulfill its requirements under the Clean Air Act (CAA), particularly with regards to the Regional Haze requirements of Section 169A of the CAA and implementing regulations. Oregon has determined that installation of selective catalytic reduction (SCR) on the turbines at Compressor Station #13 is necessary for reasonable progress pursuant to 40 C.F.R. § 51.308(f)(2). Pursuant to Section 169A of the CAA and 40 C.F.R. § 51.308(f)(2), as part of its determination, ODEQ considered the cost of installing SCR on the turbines at Compressor Station #13.

Scope of Mr. Hedgpeth’s Testimony and Limitations

I authorize Mr. Hedgpeth to testify about the application of EPA’s guidance, including EPA’s Air Pollution Control Cost Manual, to determining the cost of installing SCR on the turbines at Compressor Station #13. Mr. Hedgpeth may testify to whether ODEQ’s determination of the cost of installing SCR on the turbines at Compressor Station #13 is consistent with EPA’s guidance, including EPA’s Air Pollution Control Cost Manual. To the extent necessary to establish Mr. Hedgpeth’s credibility and expertise and/or to inform his testimony regarding determining the cost of installing SCR on the turbines at Compressor Station #13, Mr. Hedgpeth may also testify to his experience determining the costs of installing air pollution controls on other stationary sources using EPA’s Air Pollution Control Cost Manual.

Mr. Hedgpeth is *not* authorized to testify or otherwise speak to: (1) the policy basis or underlying assumptions of EPA guidance, including the Air Pollution Control Cost Manual, or (2) the approvability of Oregon’s draft Regional Haze state implementation plan. Moreover, EPA’s authorization of Mr. Hedgpeth to testify should not be construed as an official position as to whether Oregon’s draft State

Implementation Plan or any component thereof, satisfies CAA requirements. Any action on Oregon's Regional Haze State Implementation Plan will be based on Oregon's final plan submission and be subject to notice and comment rulemaking.

If you have any questions concerning this matter, please contact Brett Dugan, Assistant Regional Counsel, of my staff at (206) 553-8562.

Sincerely,

Beverly Li
Regional Counsel

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